

UNITED STATES ATTORNEY
District of New Jersey
By: Susan Steele
Federal Building, 7th Floor
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 04-5918 (WGB)

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a verified complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred in connection with the release and threatened release of hazardous substances at the A.O. Polymer Superfund Site, comprising 4.18 acres more or less located in Sparta Township, New Jersey ("the Defendant Property"). The United States alleged that the Defendant Property is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The United States asserted in the complaint, and continues to assert, that the Defendant Property is liable in rem for costs incurred in connection with the government's response action.

C. The United States claims that it incurred more than \$1,751,000 and that it has not recovered any of its response costs incurred in connection with the Defendant Property.

D. On or about November 12, 2004, U.S. EPA perfected a lien on Defendant Property pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l).

E. The United States served copies of the Verified Complaint in this matter on all individuals, business entities and government entities that the United States was aware of that might have liens, claims or other interests in the Defendant property.

F. On or about February 14, 2005, the United States served a copy of the Verified Complaint and a Notice of Complaint Against Real Property to both the titleholder of record, A.O. Corporation, at its address of record and upon the Treasurer of the State of New Jersey.

The United States also served the widow of the deceased owner of A.O. Corporation in hand on March 21, 2005. The United States posted a Notice of Complaint Against Real Property on the Site, in the U.S. District Courthouse for the District of New Jersey on January 20, 2005 and January 26, 2005 respectively, and published notice of the complaint as a legal notice in the New Jersey Herald on the following dates: March 23, 30 and April 6, 2005.

G. Interested Parties have asserted their rights in this case by filing answers and statements of interest, or, in the case of the State of New Jersey, by filing a separate State court action against A.O. Corporation. No other entities, including A.O. Corporation, the owner of record, have asserted any rights in this case. Interested Parties do not dispute that: (1) the Defendant Property is a "facility" as defined by CERCLA, 42 U.S.C. § 9601(9); (2) there has been a release or threatened release of a hazardous substance from the site; (3) the release or threatened release has caused the United States to incur response costs; and (4) the owner of the Defendant Property is a liable party pursuant to 42 U.S.C. § 9607(a).

H. On September 15, 2005, the court issued a default judgment against A.O. Corporation for failing to reply to the Verified Complaint.

I. The New Jersey Department of Environmental Protection ("DEP") and the Administrator have incurred and continue to incur costs, including response costs, pursuant to CERCLA, and cleanup and removal costs, as defined under the Spill Act, N.J.S.A. 58:10-23.11b in connection with the Defendant Property. DEP as trustee for natural resources has incurred, and will continue to incur, damages, including reasonable assessment costs, for the injury to, destruction of, or loss of any natural resource resulting from the release of hazardous substances

at the Defendant Property. DEP and the Administrator have more than \$280,000.00 in outstanding costs and damages in connection with the Defendant Property.

J. The Township of Sparta, in its answer, asserted that it holds tax liens on the property in the combined amount of \$89,821.69.

K. MD Sass Municipal Finance Partners-II, ("MD Sass") in its answer, asserted that it purchased tax liens from the Township of Sparta secured by the Site in the amount of \$24,181.13.

L. The Parties agree, and this Court by entering this Consent Judgment and Order of Sale ("Consent Judgment") finds, that this Consent Judgment has been negotiated in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Judgment, it is ORDERED, and ADJUDGED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has jurisdiction over the Parties and Defendant Property. The Parties consent to and shall not challenge entry of this Consent Judgment on the basis of this Court's jurisdiction to enter and enforce this Consent Judgment.

III. PARTIES BOUND

2. This Consent Judgment is binding upon: the United States; the Administrator of the New Jersey Spill Compensation Fund; the New Jersey Department of Environmental Protection; the Township of Sparta; MD Sass; and A.O. Corporation. Any transfer of assets or real or personal

property, or any change in legal status, including but not limited to any change in the status of any Party, shall in no way alter the status or responsibilities of such Party, including heirs, successors or assigns, under this Consent Judgment.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Judgment that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Judgment or in any appendix attached hereto, the following definitions shall apply:

a. "Administrator" means the Administrator of the New Jersey Spill Compensation Fund, who is appointed pursuant to N.J.S.A. 58:10-23.11j.

b. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 - 9675.

c. "Consent Judgment" means this Consent Judgment and Order of Sale and all appendices attached hereto. In the event of conflict between the body of this Consent Judgment and any appendix, the Consent Judgment shall control.

d. "Day" means a calendar day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Defendant Property" means the real property located in the Township of Sparta, New Jersey, also known as the A.O. Polymer Superfund Site, consisting of approximately 4.18 acres of land, as described and depicted generally on the map and property description attached as Attachment A.

f. "EPA" means the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Fair Market Value" means the price at which a property would change hands between a willing buyer and a willing seller at arm's length and under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

i. "Interest" means interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

j. "Interested Parties" means the Administrator of the New Jersey Spill Compensation Fund, the New Jersey Department of Environmental Protection, the Township of Sparta, MD SASS, and the United States.

k. "Net Sales Proceeds" means the total value of all consideration for the Transfer of the Defendant Property less the transaction costs incurred by the Parties in conducting the sale including but not limited to the costs of advertising and appraisal as set forth in Paragraph 10 herein.

l. "Paragraph" means a portion of this Consent Judgment identified by an Arabic numeral or an upper or lower case letter.

m. "Parties" means the United States and the Interested Parties.

n. "Response Costs" means all costs, including but not limited to direct and indirect costs, that U.S. EPA or DOJ on behalf of U.S. EPA has paid or incurred in connection with the Defendant Property through the date of lodging of this Consent Judgment, plus accrued Interest on all such costs through such date.

o. "Section" means a portion of this Consent Judgment identified by a Roman numeral.

p. "Transfer" means each conveyance by Marshals Deed under the terms of sale contained in the Consent Judgment.

q. "United States" means the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENTS

4. The Clerk of the Court shall pay from the Net Sale Proceeds:

- a. Ten percent (10%) of the Net Sales to the State of New Jersey;
- b. Four percent (4%) of the remaining Net Sales Proceeds to Township of Sparta;
- c. 1 percent (1%) of the remaining Net Sales Proceeds to MDSASS;
- d. Eighty-five (85%) of the remaining Net Sale Proceeds to the EPA Hazardous Substances Superfund.

5. Payment to the EPA Hazardous Substance Superfund shall be made by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the Clerk of the Court by the United States Attorney's Office for the District of New Jersey. Each EFT or check

shall reference the name and address of the party making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number 02L3, and DOJ Case Number 90-11-3-07502 and shall be sent to:

U.S. Environmental Protection Agency, Region II
Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

At the time of any payment(s), notice that payment(s) has (have) been made shall be sent according to the specifications in Section VIII (Notices and Submissions).

6. Payment to the New Jersey Spill Compensation Fund and the Department of

Environmental Protection shall be made by check made payable to "Treasurer, State of New Jersey" and mailed to Richard Engel, Section Chief, Cost Recovery/NRD Section, R.J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625.

(a) Payment to the Township of Sparta shall be made by check made payable to the Township of Sparta" and mailed to Sparta Municipal Building, c/o Mr. Henry Underhill, Township Manager, 65 Main Street, Sparta, New Jersey 07871.

(b) Payment to MD Sass shall be made by check made payable to: MD Sass Municipal Finance Partners-II and mailed to 1185 6th Avenue, 18th Floor New York, NY 10036.

(c) At the time of any payment(s), notice that payment(s) has (have) been made shall be sent according to the specifications in Section VIII (Notices and Submissions).

VI. EXECUTION AND SALE OF DEFENDANT PROPERTY

7. Following entry of this Consent Judgment, the property is to be appraised by a competent

professional appraiser to be selected by the United States. The United States shall, in the first instance, pay the appraiser's costs and fees and shall be reimbursed from sale proceeds by payment by the United States Marshal prior to distribution as set forth in Paragraph 4 above.

- a. Following entry of this Consent Judgment and appraisal of the Defendant Property, sale of the Defendant Property shall proceed in accordance with 28 U.S.C. § 2001(b) (Sale of realty generally) and § 2002 (Notice of sale of realty) under the auspices of the United States Marshals Service within 90 days of the entry of this Consent Judgment or if the appraisal is completed after the 90 day period, within 30 days after the date of appraisal.

8. The sale of the Defendant Property shall take place at the United States Courthouse, 50 Walnut Street, Newark, New Jersey, and it shall proceed according to the requirements for confirmation of a public sale pursuant to 28 U.S.C. § 2001 and the adequacy of the amount of the high bid shall be subject to approval by the United States in its sole discretion after reasonable opportunity for consultation with the interested parties, except that any interested party bidding on the property may not be consulted if the possibility for a conflict of interest exists.

9. The terms of sale shall be cash. The successful bidder, called "purchaser" herein, upon approval of his bid by the authorized representative of the United States present at the sale, shall be required to deposit with the United States Marshal cash or cash equivalent equal to twenty percent (20%) of the total bid immediately upon the property being struck off and awarded to him as the highest and best bidder; and the remaining eighty percent (80%) of the purchase price

shall be paid to the United States Marshal within thirty (30) days of written notice to purchaser that the United States Marshal has received a certified copy of the Order Confirming Sale and is prepared to deliver to purchaser a deed to the property at a time and place specified.

10. The purchaser shall be liable for payment of the purchase money, whether he attends and received his deed at such time and place or not; and in case he neglects to receive his deed and pay the balance of the purchase money, as aforesaid, the United States Marshal will have the option of either readvertising the property and selling it again, or of proceeding to compel the purchaser to complete his purchase; and in the event of a resale if property should produce a lesser sum than the former bid, interest and expenses, the purchaser will be held liable for the difference; but if it should produce a larger sum than the former bid, interest and expenses, the purchaser shall not receive any benefit thereby.

11. The bidding will be kept open after the property is struck off; and in the event that the purchaser fails to comply with any of the above conditions of sale, the United States Marshal, at his option, may again immediately put up the premises for sale, subject to the same conditions, and the original purchaser shall be held liable for any deficiency and shall not receive benefits from any increased bid.

12. In the case that the United States does not approve the bid, or that no bid is received at the Sale, the United States Marshal shall readvertise and sell the property at a time not less than 6 months after the sale.

13. The reference, to "he," "his" or "him, relating to the purchaser shall be held to apply to one or more individuals, male or female, or a corporation or corporations.

14. The purchaser shall be liable for any and all realty transfer taxes and recording fees that may be required by any law.
15. Confirmation of sale shall issue without the necessity of further notice or of a motion, or upon motion of the plaintiff, the purchaser, or any party in this cause, or by the Court upon its own motion, and the United States Marshal be directed to deliver his deed to the purchaser.
16. The purchaser takes the property subject to such facts as inspection of the property and publicly available records may reveal, and takes the property strictly as is.
17. The 4.18 acre property was listed on the National Priorities List ("NPL") on September 1, 1983. A 3.76-acre portion known at the "Facility Area" was deleted from the NPL on August 26, 2002 following EPA's and NJDEP's determination that the Facility Area portion does not pose a significant threat to human health, welfare, or the environment and that all appropriate response actions have been completed at the Facility Area portion. See Notice of Deletion at 67 FR 54744 (August 26, 2002) and Notice of Intent for Partial Deletion at 67 FR 41914 (June 20, 2002). Attached hereto as Attachment A. The remaining 0.42-acre of land and the contaminated groundwater under the 4.18 acres remain on the NPL. Continued access to the property by EPA, NJDEP and their authorized representatives is required to monitor the groundwater and to operate and maintain the selected remedy. Further information regarding the response actions at the property is contained in EPA and DEP Site files and may be obtained by contacting EPA's Remedial Project Manager, Rich Puvogel, 290 Broadway, 19th Floor, New York, NY 10007-1866, (212) 637-4410 or by electronic mail to puvogel.rich@epa.gov; and DEP's Project Manager, Cynthia Pfleiderer at (609) 984-7906 or by electronic mail to

Cynthia.Pfleiderer@dep.state.nj.us.

18. As a provision of the sales contract or through separate access agreement, the purchaser shall agree to provide access for a period of 20 years to EPA, NJDEP and their authorized representatives to the property for the limited purpose of maintaining groundwater wells and monitoring groundwater, and for the operations and maintenance of the selected remedy on the 46 acre portion of the site described above.

19. The purchaser takes the property as described in the attached property description and subject to all liens as proper search of the records may disclose; however, upon distribution of sales proceeds as set forth in paragraph 4 above, the United States and each of the Interested Parties shall fully release their liens on the property.

VII. EFFECT OF SETTLEMENT

20. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. The United States and the Interested Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not an Interested Party.

VIII. NOTICES AND SUBMISSIONS

21. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at

the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the United States and the Interested Parties.

As to the United States:

DOJ
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-3-07502

Environmental Protection Agency
New Jersey Remediation Branch
Emergency and Remedial Response
U.S. EPA Region 2
290 Broadway
New York, NY 10007-1866
Attn: AO Polymer Corporation Superfund Site Remedial Project Manager

New Jersey Superfund Branch
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
Attn: A.O. Polymer Site Attorney

Financial Management Branch
Dana Anderson
U.S. EPA
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268
AcctsReceivable.CINWD@eps.gov

As to Interested Parties:

New Jersey Spill Compensation Fund

Richard Engel, Section Chief
Cost Recovery/NRD Section
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, NJ 08625-0093

Township of Sparta

Angelo Bolcato
Laddey, Clark & Ryan
60 Blue Heron Road
Sparta, New Jersey 07871-2600

Henry Underhill, Township Manager
Sparta Township Municipal Building
65 Main Street
Sparta, NJ 07871

MD Sass

Robin London-Zeitz
201 Barclay Pavilion West
Cherry Hill, NH 08034

IX. RETENTION OF JURISDICTION

22. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Judgment.

X. INTEGRATION

23. This Consent Judgment constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Judgment. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent

Judgment. This Consent Judgment incorporates the following attachment: Attachment A Map and Legal Description of Defendant Property.

XI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

24. This Consent Judgment shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or considerations which indicate that this Consent Judgment is inappropriate, improper, or inadequate. The Interested Parties consent to the entry of this Consent Judgment without further notice.

25. If for any reason this Court should decline to approve this Consent Judgment in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XII. EFFECTIVE DATE

26. The effective date of this Consent Judgment shall be the date upon which it is entered by the Court.

XIII. SIGNATORIES/SERVICE

27. The undersigned representatives of Interested Parties and the United States, or their duly designated representatives, certify that he or she is authorized to enter into the terms and conditions of this Consent Judgment and to execute and bind legally such Party to this document.

28. Interested Parties hereby agree not to oppose entry of this Consent Judgment by this

Court or to challenge any provision of this Consent Judgment.

29. Interested Parties shall identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Judgment. Interested Parties hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIV. FINAL JUDGMENT

30. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute the final judgment between and among the Parties. The Court further finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2006.

United States District Court Judge

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of U.S. v. 4.18 Acres of Land, Township of Sparta, New Jersey, Civil Action No. 04-5918(WGB) relating to the A.O. Polymer Corporation Superfund Site.

FOR THE UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

Date: _____

/ SUE ELLEN WOOLDRIDGE /
Assistant Attorney General
Environment and Natural Resources Division
Washington, D.C. 20530

Date: _____

ELISE S. FELDMAN
Trial Attorney
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3483

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

SUSAN STEELE
Assistant United States Attorney
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, NJ 07102

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date: _____

George Pavlou, Director
Emergency and Remedial Response Division
Region II
U.S. Environmental Protection Agency

Date: _____

FRANCES MARIA ZIZILA
Assistant Regional Counsel
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of U.S. v. 4.18 Acres of Land, Township of Sparta, New Jersey, Civil Action No. 04-5918(WGB) relating to the A.O. Polymer Corporation Superfund Site.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Dated: 10/5/06


Irene Kropf

Assistant Commissioner, Site Remediation & Waste Management

NEW JERSEY SPILL COMPENSATION FUND

Dated: 10/4/06


Leonard J. Romino,

Administrator, New Jersey Spill Compensation Fund

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

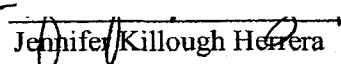
Dated: 10/20/06


Amy Cradic

Assistant Commissioner, Natural & Historic Resources

ANNE MILGRAM
ACTING ATTORNEY GENERAL OF NEW JERSEY

Dated: 10/20/06


Jennifer Killough Herrera
Deputy Attorney General

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of U.S. v. 4.18 Acres of Land, Township of Sparta, New Jersey, Civil Action No. 04-5918(WGB) relating to the A.O. Polymer Corporation Superfund Site.

FOR TOWNSHIP OF SPARTA

Date: _____
Manny Goldberg, Mayor
Sparta Township Municipal Building
65 Main Street
Sparta, NJ 07871

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Henry Underhill, Township Manager
Sparta Township Municipal Building
65 Main Street
Sparta, NJ 07871

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of U.S. v. 4.18 Acres of Land, Township of Sparta, New Jersey, Civil Action No. 04-5918(WGB) relating to the A.O. Polymer Corporation Superfund Site.

FOR MD SASS

Date: 9/5/06

~~_____
Name: John M. de Guzman~~

~~Title: Manager~~

~~Address: 1185 Ave of the Americas
18th Floor
New York, NY 10036~~

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robin London-Zeitz, Esquire
Title: Zeitz & Stein, LLC
Address: 201 Barclay Pavilion West
Cherry Hill, NJ 08043

Attachment A

Notice of Deletion at 67 FR 54744 (August 26, 2002) and Notice of Intent for Partial Deletion at 67 FR 41914 (June 20, 2002)

LEXSEE 67 FR 41914

FEDERAL REGISTER

Vol. 67, No. 119

Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 300

[FRL-7224-7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

67 FR 41914

DATE: Thursday, June 20, 2002

ACTION: Notice of intent for partial deletion of the Facility Area portion of the A.O. Polymer Site from the National Priorities List.

To view the next page, type .np* TRANSMIT.

To view a specific page, transmit p* and the page number, e.g. p*1

[*41914]

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Facility Area portion of the A.O. Polymer Site (Site) located in Sussex County, New Jersey, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the State of New Jersey (State), through the Department of Environmental Protection, have determined that all appropriate response actions relating to the Facility Area portion of the Site have been implemented. This partial deletion pertains only to the Facility Area portion of the Site and does not include the other portions of the Site.

The purpose of the proposed deletion of the Facility Area is to remove remediated and potentially useful property from the NPL, thereby making the land available for beneficial reuse.

EPA compiled Facility Area EPA documents, such as soil sample results and locations, maps, Pollution Reports, and other relevant deletion [*41915] documentation, which EPA used in its determination to propose the Facility Area for deletion from the NPL. These Site files can be reviewed in the repositories listed below.

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and a local newspaper of record.

ADDRESSES: Comments may be mailed to: Jeff M. Catanzarita, Remedial Project Manager, EPA, Region II, 290 Broadway, 19th Floor, New York, New York 10007-1866.

Information Repositories: Comprehensive information on the Site, as well as information specific to this proposed partial deletion is available for review at EPA's Region II office in New York, New York, and at the information repository listed below. The Site file and the Deletion Docket for this partial deletion are maintained at the EPA Records Center, 290 Broadway, 18th Floor, New York, New York 10007-1866. The Records Center hours of operation are 9-5 p.m., Monday through Friday, and the Records Center staff can be reached at (212) 637-4308.

EPA has established a local information repository at the Sparta Public Library, 22 Woodport Road, Sparta, New Jersey 07871, where the Deletion Docket is available for public review.

FOR FURTHER INFORMATION CONTACT: Jeff M. Catanzarita (212) 637-4409, fax No. (212)-637-4429; e-mail catanzarita.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

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III. Deletion Procedures

IV. Basis for Intended Partial Site Deletion

I. Introduction

The U. S. Environmental Protection Agency (EPA) Region II announces its intent to delete a portion of the A.O. Polymer Site (Site), located in Sussex County, New Jersey, from the National Priorities List (NPL) and requests comment on this proposal. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List *60 FR 55466* (Nov. 1, 1995). The Site has two land portions, hereafter referred to as the Facility Area and the Disposal Area. This proposal for partial deletion only pertains to the 3.76-acre Facility Area of the Site. The 0.42-acre Disposal Area and the contaminated groundwater will remain on the NPL.

The Site is an inactive facility located at 44 Station Road in the Township of Sparta, Sussex County, New Jersey. The Site occupies 4.18 acres near the Sparta Rail Road Station along the New York, Susquehanna and Western (NYS&W) Railway. The Site is bounded to the north and east by Station Park, a municipal recreation area, to the southeast by Station Road, and to the south and west by the NYS&W Railway. The Site is located on two lots delineated by a Sussex County tax map as Block 19, Lot 45-B (3.22 acres) and Lot 45-C (0.96 acres).

The proposal for partial deletion pertains to both lots except for a portion of Lot 45-B, which is the Disposal Area and is described in Section IV, Basis for Intended Partial Site Deletion. The Disposal Area is located in the northwest corner of the property, separated from other areas by a dirt road.

No further action is necessary to protect human health, welfare, and the environment in relation to the Facility Area portion of the Site and, therefore, EPA proposes to delete the Facility Area because all appropriate CERCLA response activities have been completed. However, ongoing soil cleanup activities at the Disposal Area and the groundwater are not complete, and the Disposal Area and groundwater will remain on the NPL and are not subject to this partial deletion.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund ("the Fund"). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a local newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR Sec. 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

III. Deletion Procedures

The following procedures were used for the proposed deletion of the Facility Area at the Site:

(1) From 1993 to 1997, EPA's Removal Action Branch conducted removal activities at the Facility Area, which included confirmatory soil sampling. Sampling results found contaminant levels below the New Jersey Residential Soil Cleanup Criteria and, therefore, the Facility Area is available for unrestricted use.

(2) EPA has recommended the partial deletion and has prepared the relevant documents.

(3) The State through the NJDEP concurs with this partial deletion in a letter dated February 20, 2002.

(4) Concurrent with this national Notice of Intent for Partial Deletion, a [*41916] notice has been published in a local newspaper of record and has been distributed to appropriate federal, state, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a local newspaper of record.

(5) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** notice, and a concurrent notice in a local newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the Facility Area portion of the Site from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the EPA Region II information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. If appropriate, EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The

Responsiveness Summary will be made available to the public at the information repositories listed previously. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final Notice of Partial Deletion in the **Federal Register**. Deletion of the Facility Area does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the Facility Area of the Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The Site is located at 44 Station Road in the Township of Sparta, Sussex County, New Jersey. From the early 1960s until 1978, the Site was the location of two businesses: Mohawk Industries (Mohawk), which operated a resins manufacturing and solvent reclamation facility; and later A.O. Polymer Corporation (A.O. Polymer), which continued the resins manufacturing processes of Mohawk. The activities of these companies contaminated the soil and groundwater at the Site.

The Site occupies approximately 4 acres near the Sparta Rail Road Station along the New York, Susquehanna and Western (NYS&W) Railway and is situated in a semi-rural area near the Wallkill River. The Site is divided into two distinct areas, the Disposal Area and the Facility Area.

In 1978, the facility was purchased by A.O. Corporation, the parent corporation of A.O. Polymer. A.O. Polymer purchased the rights to manufacture resins products previously produced by Mohawk. A.O. Polymer continued to utilize the same processing machinery, storage vessels, and laboratories used by Mohawk. For approximately one year in 1978, A.O. Polymer also continued Mohawk's solvent reclamation process.

Until 1994, A.O. Polymer continued to use the Facility Area for resins manufacturing operations. The Facility Area structures present at the Site include office and laboratory facilities, a main reactor building, assorted storage buildings, numerous storage tanks, and a non-contact water cooling pond. These structures remain on the Facility Area but are no longer used.

Complaints of odors emanating from well water and air near the Site were first registered by citizens living or working near the Site in 1973. Complaints of odors and bad smelling well water intensified in 1978, touching off formal investigations by the Sparta Health Department and the NJDEP. In December 1978, NJDEP inspectors and Sparta Health Department officials collected samples from potable wells surrounding the Site. Analysis of these samples revealed the existence of Volatile Organic Compounds (VOCs) in three domestic wells located along Station Road. In June 1979, the owners of the three affected wells filed damage claims with the New Jersey Hazardous Spill Fund, and in January 1980, these homes were connected to a municipal water supply.

In 1978, NJDEP began investigating reports of drum stockpiling at the Site. These investigations identified on-site waste disposal and storage practices as the source of groundwater contamination in residential wells. Waste handling practices included disposal of liquid chemical waste into unlined lagoons, improper storage of over 800 deteriorating drums, and burial of crushed and open drums containing waste materials including volatile and semi-volatile organic compounds.

In 1980 and 1981, surficial cleanup at the Site was initiated by NJDEP, including the removal of surface drums and the excavation and removal of contaminated soil located in the unlined lagoon area (i.e., the Disposal Area). The Disposal Area of the Site was reportedly excavated to a depth of approximately 10 feet and backfilled with clean soil. This cleanup resulted in the removal of 1,150 drums; 1,700 cubic yards of contaminated soil; and 120 cubic yards of crushed drums and debris.

Concern regarding the extent of groundwater contamination resulted in additional investigations by NJDEP. In January 1982, NJDEP's Division of Water Resources installed 11 monitoring wells on and adjacent to the Site to determine the extent of groundwater contamination. Sampling confirmed that contamination had reached the Allentown formation, which is a source of potable water in the area. Sampling also revealed that groundwater contamination had migrated to Station Park, 300 yards northeast of the Site.

On September 1, 1983, the Site was placed on the NPL.

Complaints of odors emanating from the Site continued throughout the 1980s. In response to repeated complaints from residents in the area, the NJDEP Division of Environmental Quality cited and fined the A.O. Polymer facility for air emission violations.

In 1984, a Remedial Investigation and Feasibility Study (RI/FS) was performed by NJDEP and funded by EPA through a Cooperative Agreement with NJDEP. During the RI, the Disposal Area was sampled. Soil samples taken from this area of the Site and compared with other soil samples taken from other portions of the Site led to the conclusion that the soil ten to twenty feet beneath the Disposal Area contained residual VOC contamination that acted as a source of contamination to the groundwater.

After initial indications of groundwater contamination were confirmed, NJDEP installed a network of 18 additional monitoring wells during the RI/FS. These 18 monitoring wells were installed in and around the Site to characterize the nature and extent of groundwater contamination. The RI/FS report confirmed that the source of groundwater contamination was located in Disposal Area soil and the groundwater contamination threatened a drinking water aquifer. This contaminated soil area takes up approximately 0.42 acre of the Site and is bounded to the northwest and southwest by the Gun Club access road and to the northeast and southeast by a steep embankment that adjoins the park property. [*41917]

The area of groundwater contamination is approximately 1,000 feet long and 900 feet wide and extends from the Site to the Wallkill River. The majority of the groundwater contamination is located beneath Station Park.

On June 28, 1991, EPA and NJDEP completed the RI/FS and issued a Record of Decision (ROD), which selected a remedy to address contaminated soil at the Disposal Area and groundwater under both areas and extending off the Site. EPA selected Soil Vapor Extraction (SVE) to treat the source of the groundwater contamination (i.e., Disposal Area soil) and a groundwater extraction and treatment system to remediate the groundwater contamination.

After the ROD was signed, EPA became the lead agency in charge of response activities at the Site. EPA identified Potentially Responsible Parties (PRPs) and issued a Unilateral Administrative Order to conduct the Remedial Design and Remedial Action (RD/RA). Design of the SVE system started on April 2, 1992. Both the SVE and groundwater extraction waste streams are run through treatment plants located on property adjacent to the A.O. Polymer property designated in the county tax records as Lot 45-A. By October 1994, construction of the SVE system was completed and the system was operational and functional in January of 1995. Through February 2002, the SVE system has removed over 5,205 gallons of VOCs from contaminated soil.

The groundwater treatment component of the selected remedy consisted of pumping the contaminated groundwater from the aquifer, treating it with a Powdered Activated Carbon Treatment (PACT) system and then returning the treated groundwater to the aquifer. Treatability studies conducted on the PACT system showed that this treatment system could not meet the discharge limitations; therefore, an Explanation of Significant Differences (ESD), issued on September 17, 1996, called for modifying the ROD to allow the use of an air stripper to remove contaminants from groundwater, so that the contingent surface water discharge point, outlined in the ROD, could be implemented instead of using groundwater re-injection. In addition, the ESD called for only the most contaminated part of the plume to be treated via the extraction and treatment system, thereby allowing the remaining low level contaminant concentrations to naturally attenuate. Construction of the groundwater pump and treatment system was completed on March 26, 1998. On April 30, 1998, the NJDEP approved a Classification Exception Area (CEA) and a Well Restriction Area, dated April 8, 1998, for a portion of the Site, which are included in the Deletion Docket. The CEA was established in accordance with N.J.A.C. 7:9-6.6, because constituent groundwater quality standards are not being met at this Site due to pollution caused by human activity. The Well Restriction Area was established to preclude withdrawal of the contaminated groundwater associated with this Site, except for the purposes of monitoring and/or additional treatment at another time. Through February 2002, the groundwater treatment system has removed over 1,414 gallons of VOCs from contaminated groundwater. During the remedial design, it was estimated that the implemented remedy would take about 13 years to achieve groundwater cleanup goals (i.e., Maximum Contaminant Levels [MCLs]) in down-gradient compliance monitoring wells. However, the goal of the groundwater component of the remedy is to achieve the cleanup goals in all monitoring wells, and additional treatment beyond 13 years may be required. The SVE system only treats the source of the groundwater contamination in soils, and it is likely that the SVE system could be turned off within the next five years.

Facility Area Response Actions

The 3.76-acre Facility Area contains structures, such as office and laboratory facilities, a main reactor building, assorted storage buildings, numerous storage tanks, and a non-contact water cooling pond.

In early 1994, production activities at the facility ceased and the Site operator left hazardous material improperly stored and unsecured on the Facility Area of the Site. In response to requests from the Township of Sparta Health Department, EPA initiated a removal action at the recently abandoned facility on April 27, 1994. Additional soil samples and waste samples were collected at the Facility Area during the removal action. Sample results indicated that hazardous substances contained in drums and tanks found at the Site were being released to the environment. EPA removal activities included removal of hazardous materials from the laboratory building, storage building, reactor building, some above-ground piping and tanks, as well as an underground storage tank.

During EPA's removal activities, 121 cubic yards of soil, 91 cubic yards of asbestos-containing materials, 34,000 pounds of hazardous waste, 37,600 pounds of non-hazardous waste, and 3,491 gallons of bulked hazardous liquids were removed from the Site.

After removal activities were completed, EPA collected confirmatory soil samples to determine if any remaining areas of the Site were in need of remediation. An analysis of earlier RI/FS soil samples and the post-removal action soil samples taken on the Facility Area indicated that soil on the Facility Area does not exceed New Jersey Residential Direct Contact Soil Cleanup Criteria.

On August 18, 1998, EPA removal activities were concluded. EPA bases its proposal to delete the Facility Area at the A.O. Polymer Site on the determination by EPA and the NJDEP, that all appropriate actions under CERCLA have been completed to protect human health, welfare, and the environment related to the Facility Area portion of the Site.

EPA compiled Facility Area documents, such as soil sample results and locations, maps, Pollution Reports, and other relevant deletion documentation, which EPA used in its determination to propose the Facility Area for deletion from the NPL. These Site files can be reviewed in the repositories listed above.

All of EPA's response actions at the Facility Area were conducted using funds from the Hazardous Substance Superfund.

The Site boundaries are delineated by a Location Survey Map, dated June 29, 1998, which demarcated the entire Site. The Site is mapped out according to Sparta, New Jersey tax records as: Block 19, Lot 45-B (3.22 acres), and Block 19, Lot 45-C (0.96 acres). The Disposal Area is located on the northern side of Lot 45-B and is separated from the Facility Area by a dirt road. The Facility Area is all of Lot 45-C and the majority of Lot 45-B, minus the Disposal Area. The 3.76-acre Facility Area is bounded on the west by the New York, Susquehanna and Western Railroad property, to the north by the Disposal Area, on the east by a Township park and to the south by commercial property.

EPA demarcates the Facility Area portion of the Site as follows: all of Block 19, Lot 45-C and all of Block 19, Lot 45-B, except, the 0.42-acre Disposal Area located within Block 19, Lot 45-B. EPA delineates the 0.42-acre Disposal Area portion by the following Easting and Northing coordinates: point A (2,009,826.645: 806,913.161); to point B (2,010,049.344: 806,913.161); to point F (2,010,052.240: 806,758.795); to point G (2,009,880.808: 806,726.615); to point H (2,009,856.230: 806,760.672); and back to point A. The area within the above [*41918] referenced Easting and Northing coordinates represents the area that shall remain on the NPL (i.e., the Disposal Area). This proposal for partial deletion pertains only to the above-described Facility Area of the Site. The Disposal Area described in the above Easting and Northing coordinates will remain on the NPL along with the groundwater cleanup.

Community Relations Activities

Initial community interest was high, related to fears about contaminated drinking water and odors emanating from the Site. Since the 1991 ROD was issued, the community concern with the Site has been minimal. EPA did not hold a public meeting for the Facility Area removal action.

The community and Sparta Township officials expressed a desire to possibly redevelop the Facility Area property. Any future developer or owner of the Facility Area property should be aware that EPA, the State, and the PRP conducting the cleanup will need access to the Facility Area for the duration of the ongoing response action at the Site.

Current Status

67 FR 41914, *

Based on the successful completion of EPA's removal action and the extensive investigations and sampling performed on the Facility Area of the Site, there are no further response actions planned or scheduled for the Facility Area of the Site. There are no further cleanup activities, except periodical groundwater monitoring, necessary at the Facility Area. Pursuant to the NCP, a five-year review is not required at the Facility Area portion of the Site. However, since five-year reviews are needed at other portions of the Site, five-year reviews will be performed. The selected remedy is ongoing at the Disposal Area and will continue for an estimated 13 years.

While EPA does not believe that any future response actions at the Facility Area of the Site will be needed, if future conditions warrant such action, the Facility Area portion of the Site will remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of the Disposal Area of the Site and the groundwater, which are not proposed for deletion and remain on the NPL.

In a letter dated February 20, 2002, the State, through the NJDEP, has concurred on EPA's final determination regarding the proposed partial deletion.

EPA and NJDEP have determined that the Facility Area portion of the Site does not pose a significant threat to human health, welfare, or the environment and that all appropriate response actions have been completed at the Facility Area portion. Therefore, EPA makes this proposal to delete the Facility Area portion from the NPL.

Dated: June 7, 2002.

Jane M. Kenny,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 02-15455 Filed 6-19-02; 8:45 am]

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Attachment B

Legal Description of Defendant Property

Attachment B

The A.O. Polymer Superfund Site is located at 44 Station Road, Sparta Township, Sussex County, State of New Jersey, and includes the following described lands:

Block: 19 Lots: 45.02 and 45.03

ALL of those certain tracts of land together with the buildings and appurtenances located thereon, more particularly described as follows:

FIRST TRACT

Being a part of the premises taken by proceedings of condemnation by New York, Susquehanna and Western Railroad Company, November 15, 1881, recorded in Book A of Awards of Commissioners, Page 1 of Sussex County, and beginning at a point in the first course of the third tract mentioned in said award and said point being 160 feet Easterly measured radially from the center line of the main tract of the railroad company and running thence in a Northerly direction along the first course of the third tract in the aforementioned award, 217 feet more or less to a corner; and thence in an Easterly direction along the second course of the third tract mentioned in said award, 187 feet to a corner; thence in a Northwesterly direction along the third course of the third tract of said award a distance of 556 feet more or less to a point, said point being 160 feet Easterly measured radially from the center line of the aforesaid main tract; thence Southerly on a curve concentric with and distant 160 feet Easterly from the center line of aforesaid main tract a distance of 338 feet more or less to a point; thence Westerly along a radial line from said curve 110 feet to a point; thence Southerly on a curve concentric with and distant 50 feet Easterly from the center line of aforesaid main tract a distance of 280 feet more or less to a point; thence Easterly along a radial line from said curve 110 feet to a point; thence Southerly on a curve concentric with and 160 feet Easterly of the center line of aforesaid main tract a distance of 123 feet more or less to the point or place of Beginning.

SECOND TRACT

Being that parcel of land in the Township of Sparta, County of Sussex, State of New Jersey, bounded and described as follows:

Beginning at a point in the first course of the third tract mentioned in an award for premises taken by proceedings of condemnation by New York, Susquehanna and Western Railroad Company, November 15, 1881, recorded in Book A of Commissioners Awards, Page 1, of Sussex County, said point being also the beginning point in a deed to Ernest D. Lee dated November 14, 1949, recorded June 15, 1923 in Sussex County Deed records, and running thence

- (1) In a southerly direction along the first course of the third tract in the aforementioned award one hundred fifty (150) feet more or less to a point fifty (50) feet easterly as measured radially to the center line of the main tract of the New York, Susquehanna and Wester Railroad; and running thence

- (2) Southeasterly distant fifty (50) feet easterly of as measured concentric with the aforementioned center line a distance of fifty (50) feet to a point; and running thence
- (3) Southwesterly radially to aforementioned center line a distance of thirty-seven and sixty-five hundredths (37.65) feet to a point twelve and thirty-five hundredths (12.35) feet easterly of as measured radially to aforesaid center line; and running thence
- (4) In a northerly direction concentric with and twelve and thirty-five hundredths (12.35) feet easterly of the aforesaid center line a distance of five hundred eighty-six (586) feet more or less to a point, which point is the westerly prolongation of Course No. (5) in aforementioned deed to Ernest D. Lee; and running thence
- (5) Easterly along the westerly prolongation of the aforementioned fifth course in the deed to Ernest D. Lee a distance of thirty-seven and sixty-five hundredth (37.65) feet to the intersection of courses (5) and (6) in said deed; and running thence
- (6) Southerly along the sixth course in the aforementioned Ernest D. Lee deed a distance of two hundred eighty (280) feet more or less to the intersection of the sixth and seventh courses in said deed; and running thence
- (7) Easterly along the seventh course in the aforementioned Ernest D. Lee deed a distance of one hundred ten (110) feet to the intersection of the seventh and eighth courses in said deed; and running thence
- (8) Southerly along the eighth course of the Ernest D. Lee deed a distance of one hundred twenty-three (123) feet more or less to the point or place of beginning;

Containing an area of 0.96 acres more or less; and including the building formerly used as Sparta station, water tank and eighty-five (85) feet of railroad siding located on the premises, together with the rights of the grantor into a dam and water supply line supplying water to the tank.